

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

GARY W. GIBSON	§	
VS.	§	CIVIL ACTION NO. 1:09CV469
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant, Gary Gibson, an inmate currently confined at the Federal Correctional Institution in Yazoo City, Mississippi, proceeding *pro se*, filed this motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

The Court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this motion to vacate, set aside, or correct sentence be denied.

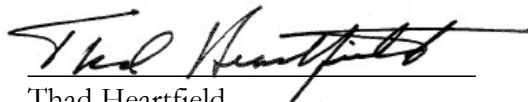
The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Movant filed objections to the Report and Recommendation of United States Magistrate Judge.¹ This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court finds movant's objections to be without merit. To the extent movant now asserts claims of police misconduct and violations of the Fourth Amendment due to an alleged illegal search and seizure, the Court notes these claims are procedurally barred. A movant may not raise constitutional or jurisdictional issues for the first time on collateral review without showing both "cause" for the procedural default and "actual prejudice" resulting from the error. *See United States v. Acklen*, 47 F.3d 739, 741-42 (5th Cir. 1995). Movant has made no showing as to cause and/or actual prejudice.

¹See Docket Entry Nos. 18 & 19.

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this the **8** day of **July, 2011**.



Thad Heartfield
United States District Judge